IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 158 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAYAJI IRON & ENGG CO

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 158 of 1986
MR MANISH SHAH for MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee, the following question has been referred to this Court for its opinion, under the provisions of Sections 256 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad Bench `C'.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in disallowing 1/6th of the total car expenses and depreciation claimed by the assessee because of the personal use of the car entrusted to the director by him?"

2. Learned advocate Shri Manish Shah for Mr.J.P. Shah has appeared for the applicant-assessee whereas learned advocate Shri Bharat Naik has appeared for the respondent.

3. The assessee is a private limited company. For the purpose of its business it owned several vehicles. For the assessment year 1979-80, the assessee had incurred expenditure to the tune of Rs.96,653/- on the vehicles maintained by it. The assessee had claimed the said amount as business expenditure, but the assessing officer came to the conclusion that all the vehicles of the assessee company were not exclusively used for the business and as the directors were also using the vehicles of the company for their personal use, the assessing officer disallowed 1/6th of the expenditure incurred by the assessee on the vehicles.

4. Being aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) dismissed the appeal. The assessee thereupon filed second appeal before the Tribunal but the Tribunal also confirmed the disallowance and dismissed the appeal.

5. Learned advocate Shri Manish Shah appearing for the assessee has submitted that the disallowance to the extent of 1/6th of the expenditure is not justified for the reason that the assessee company, by way of perquisite, had permitted its directors to use the vehicles. He has submitted that as part of salary and perquisites to the directors of the company, the directors were entitled to use the vehicles of the company and, therefore, it cannot be said that the directors were using the vehicles for their personal use and, therefore, disallowance of part of the expenditure incurred by the company for the maintenance of the vehicles was not justified. He has also submitted that without having recourse to the provisions of Sections 40(c) and 40 A of the Act, the assessing officer should not have disallowed the expenditure in question.

6. It has also been submitted by the learned

advocate appearing for the assessee that except for the assessment year 1979-80, for all other assessment years the expenditure incurred by the assessee company towards the vehicle expenditure was allowed in toto. It has been also submitted that whenever any expenditure incurred by the assessee towards maintenance of vehicles was disallowed by the assessing officer, the disallowance was finally set aside. It has been submitted by the learned advocate that as the expenditure was incurred for the purpose of business by way of salary and perquisites given to the directors, the said expenditure ought not to have been disallowed.

7. On the other hand learned advocate Shri Bharat Naik appearing for the revenue has submitted that the directors of the assessee company were using the vehicles for their personal use and as the directors were not using the vehicles exclusively for the purpose of the company, the Tribunal was justified in disallowing 1/6th expenditure of the cars and depreciation claimed by the assessee. He has therefore submitted that the view expressed by the Tribunal regarding disallowance of 1/6th of the expenditure is justified.

8. We have heard the learned advocates and have also perused the impugned orders.

9. In our opinion, as the directors of the assessee were entitled to use the vehicles of the assessee company for their personal use as per the terms and conditions on which they were appointed, it was not proper on the part of the assessing officer to disallow 1/6th of the expenditure incurred by the assessee on maintenance of its vehicles. Section 309 of the Companies Act,1956 provides the modality for determining the remuneration payable to Directors, including any Managing or full-time Director. Such remuneration is payable either as stated in the Articles of Association of the Company or in accordance with the resolution or if provided by articles, by a special resolution which might be passed by the Company in the general meeting. This payment of remuneration is subject to overall limits of managerial remuneration laid down in Section 198 of the Act. What is more material for the purpose of the present controversy is Explanation to Section 198 of the Companies Act which permits and provides that "remuneration" shall include (a) any expenditure incurred in providing any rent free accommodation etc.,(b) any expenditure incurred in providing any other benefit or amenity free of charge or at a concessional rate, (c) any expenditure which would have been incurred by the

Director but for such expenditure having been incurred by the company, (d) any expenditure incurred by the Company for the purpose of any insurance on the life etc. Therefore, it is clear that the expenditure incurred by the assessee company on maintenance of vehicles which were available to the Directors for their personal use would fall within the meaning of "remuneration" as defined in the Explanation to Section 198 of the Companies Act, and once such remuneration is fixed as provided in Section 309 of the Companies Act, it is not possible to state that the assessee company incurred an expenditure for the personal use of the Directors i.e. even if there was any personal use by the Directors, the same was as per the terms and conditions of service and in so far as the assessee company was concerned it was a business expenditure and not disallowable as such.

9.1. There is one more aspect of the matter which requires to be considered. The assessee which is a Private Limited Company is a distinct assessable entity as per definition of "person" under section 2(31) of the Act. Therefore, it cannot be stated that when the vehicles are used by the Directors, "even if they are

personally used by the Directors" the vehicles are personally used by the Company, because a limited company by its very nature cannot have any 'personal use'. The limited company is an inanimate person and there cannot be anything personal about such an entity. The view that we are adopting is supported by the provision of section 40(c) and section 40A(5) of the Act.

9.2. It is pertinent to note that except for the assessment year in question, for no other assessment year the expenditure in question has been disallowed. We see no reason for the Tribunal to take a different view for this assessment year especially when it is an undisputed fact that in the past all such disallowances were deleted by the Tribunal and the said decision was not challenged.

9.3. The Tribunal has, in our view unfortunately, upheld the order of C.I.T.(Appeals) wherein Tribunal's earlier orders in assessee's own case have been distinguished by giving reasons which are, to say the least, unwarranted. The earlier orders of the Tribunal are distinguished by stating that even if there is no personal user of cars by the Company it would yet be user for "non business purpose". As already stated hereinbefore once the expenditure in question is in terms as provided in Sections 309 and 198 of the Companies Act,1956 there cannot be any "non business"

purpose in so far as the assessee company is concerned.

9.4. In relation to the aforesaid approach of the C.I.T.(Appeals) and the Tribunal we cannot do better than reiterate what Madras High Court has stated in the case of C.I.T. vs. L.G.Ramamurthi and Others, 110 ITR 453 :

" No Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the same facts. It may be that the members who constituted the Tribunal and decided on the earlier occasion were different from the members who decided the case on the present occasion. But what is relevant is not the personality of the officers presiding over the Tribunal or participating in the hearing but the Tribunal as an institution. If it is to be conceded that simply because of the change in the personnel of the officers who manned the Tribunal, it is open to the new officers to come to a conclusion totally contradictory to the conclusion which had been reached by the earlier officers manning the same Tribunal on the same set of facts, it will not only shake the confidence of the public in judicial procedure as such, but it will also totally destroy such confidence. The result of this will be conclusions based on arbitrariness and whims and fancies of the individuals presiding over the courts or the tribunals and not reached objectively on the basis of the facts placed before the authorities.

If a Bench of a Tribunal on the identical facts is allowed to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. That is the reason why in a High Court, if a single judge takes a view different from the one taken by another judge on a question of law, he does not finally pronounce his view and the matter is referred to a Division Bench. Similarly if a Division Bench differs from the view taken by another Division Bench it does not express disagreement and pronounce its different views, but has the matter posted before a Fuller Bench for considering the question. If that is the position even with regard to a question of law, the position will be a fortiori

> with regard to a question of fact. If the Tribunal wants to take an opinion different from the one taken by an earlier Bench, it should place the matter before the President of the Tribunal so that he could have the case referred to a Full Bench of the Tribunal consisting of three or more members for which there is provision in the Income-tax Act itself".

We are in respectful agreement with the aforesaid view.

10. In the circumstances, in our opinion, the Tribunal was wrong while disallowing 1/6th of the total car expenditure and depreciation claimed by the assessee on the account of the personal use of the cars which were used by the directors. We therefore, answer the question in the negative i.e. in favour of the assessee and against the revenue.

11. The reference is disposed of accordingly with no order as to costs.

(A.R.Dave,J) (D.A. Mehta, J.)

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